

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FACEBOOK, INC., et al.,

Plaintiffs,

v.

9 XIU NETWORK (SHENZHEN)
TECHNOLOGY CO., LTD., et al.,

Defendants.

Case No. [19-cv-01167-JST](#) (AGT)

**REPORT AND RECOMMENDATION
TO GRANT PLAINTIFFS' MOTION
TO ENTER DEFAULT AGAINST
CERTAIN DEFENDANTS**

Re: Dkt. No. 35

Facebook and Instagram (referred to here collectively as Facebook) have moved for entry of default against Wei Gao and Zhaochun Liu, two defendants based in China. Judge Tigar, the district judge presiding over the case, referred Facebook's motion to the undersigned for a report and recommendation. That report follows, and with it the recommendation that Judge Tigar grant the motion.¹

* * *

The United States and China are both parties to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163 [hereinafter the Hague Service Convention or the Convention]. Last year, Facebook initiated service on Wei Gao and Zhaochun Liu by a Convention-authorized method, sending copies of the complaint, summons, and other case documents to China's central authority, the Ministry of Justice, with a request to serve these defendants at specified addresses in China. The Ministry received the case documents on June 17, 2019. *See* ECF No. 35-2, Ingalls Decl. ¶¶ 9–10 & Ex. 1; ECF No. 40, Ingalls Supp. Decl. ¶ 4 & Exs. 1–2.

More than a year has passed, and despite five requests for an update, China's Ministry of

¹ The motion also originally sought default against a third defendant, Zhaoping Liu. Facebook has since withdrawn that request. *See* ECF Nos. 40–41.

Justice hasn't provided Facebook with a certificate of service (or of attempted service) on these defendants, or with an estimate of when service will be attempted. *See* Ingalls Supp. Decl. ¶ 5; Ingalls Decl. ¶ 13(c) (noting that requests for an update were made on September 10, 2019, November 5, 2019, December 23, 2019, February 14, 2020, and May 21, 2020).

When service is attempted under the Convention, the court may enter default judgment if:

(a) the document was transmitted by one of the methods provided for in this Convention,

(b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document, [and]

(c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.

Art. 15 ¶ 2.²

All three of these conditions have been satisfied. Facebook transmitted the relevant case documents by a Convention-approved method, sending the documents to China's central authority, the Ministry of Justice. *See* Arts. 2–7. More than a year has elapsed since Facebook sent the documents to the Ministry, which is well over the six-month threshold. Finally, no certificate of any kind has been received regarding service on defendants Wei Gao and Zhaochun Liu, despite every reasonable effort having been made to obtain one.


Under these circumstances, the Convention permits the court to enter default judgment against Wei Gao and Zhaochun Liu. At this juncture, however, and perhaps in an effort to conform with the general “two-step process” for seeking default judgment in this circuit, *see Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986), Facebook has asked the Court only to enter default against these defendants. Default is warranted and the undersigned recommends that Judge Tigar grant Facebook's motion and order the Clerk of the Court to enter default against Wei

² The United States has formally adopted the provisions of this paragraph. *See* Designations and Declarations Made on the Part of the United States in Connection with the Deposit of the United States Ratification, Declaration No. 3, 20 U.S.T. 361.

Gao and Zhaochun Liu.³

IT IS SO RECOMMENDED.

Dated: July 28, 2020



ALEX G. TSE
United States Magistrate Judge

United States District Court
Northern District of California

³ Facebook has also requested an order “deeming service of process effective.” ECF No. 35 at 2; *see also* ECF No. 35-1 (proposed order). That request is premature because China’s Ministry of Justice has yet to serve Wei Gao and Zhaochun Liu. The undersigned accordingly recommends that Judge Tigar refrain from holding that service was effective.